

STATE OF MICHIGAN
COURT OF APPEALS

DEDRICK LAMPKIN,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

January 23, 2001

No. 215765

Wayne Circuit Court

LC No. 97-716430-NO

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

MEMORANDUM.

Plaintiff appeals by right from the circuit court order that granted defendant's motion for summary disposition because plaintiff failed to provide timely and specific notice of the defect and his injury to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff concedes that he failed to comply with the 120-day notice provision of MCL 691.1404(1); MSA 3.996(104)(1), but argues that the trial court erred in granting summary disposition because defendant failed to demonstrate actual prejudice as a result of the untimely notice. We disagree. Plaintiff's claim is premised on the defective highway exception to governmental immunity, MCL 691.1402; MSA 3.996(102). Pursuant to MCL 691.1404(1); MSA 3.996(104)(1), an injured person must serve notice on the governmental agency of the occurrence of the injury and defect within 120 days of the injury. The notice provision permits a governmental agency to be apprised of possible litigation against it and to be able to investigate and gather evidence quickly in order to evaluate a claim. *Brown v Manistee Co Rd Comm*, 452 Mich 354, 362; 550 NW2d 215 (1996); *Blohm v Emmet Co Bd of Co Rd Comm'rs*, 223 Mich App 383, 388; 565 NW2d 924 (1997). However, deficiencies in notice of injury and defect are non-jurisdictional; therefore, absent a showing of actual prejudice to the governmental agency, the notice provision is not a bar to the plaintiff's claim. *Id.* at 356-357, reaffirming *Hobbs v Dep't of State Hwys*, 398 Mich 90; 247 NW2d 754 (1976). In this context, actual prejudice refers to a matter that would prevent the governmental agency from being able to adequately defend itself or which would otherwise affect its entitlement to a fair trial. *Blohm, supra*.

* Circuit judge, sitting on the Court of Appeals by assignment.

We find no error in the trial court's finding that defendant had made a sufficient showing of actual prejudice. To defend itself adequately against this lawsuit, defendant needed to know in a timely manner the specific location of the alleged defect and plaintiff's injury. Plaintiff did not provide the requisite notice under MCL 691.1404(1); MSA 3.996(104)(1), and its complaint -- filed seven months after the injury -- misstated the location. Plaintiff was slow and inconsistent in his responses to defendant's discovery efforts. Eventually, when the location of the muddy tire rut was discovered, the area had changed, depriving defendant of the ability to take accurate photographs or to examine the alleged defect. *Blohm, supra* at 388-390. Accordingly, we conclude that summary disposition was properly granted to defendant.

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew